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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/905,642	07/13/2001	Richard W. Cline	XILL117728	4610

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EXAMINER

LEUBECKER, JOHN P

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 07/17/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/905,642

Applicant(s)

CLINE ET AL.

CS

Examiner

John P. Leubecker

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-74 is/are pending in the application.
- 4a) Of the above claim(s) 17-54 and 60-74 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 55-59 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6 and 15 is/are rejected.
- 7) ☒ Claim(s) 4, 7-14 and 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5, 6, 9.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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***Election/Restrictions***

1. Applicant's election of Group I, claims 1-71 in Paper No. 8 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). In addition, Applicant's election of Species A as shown in Figures 3A-3C is acknowledged. Claims 1-26 and 55-59 were indicated as reading on Species A. However, claims 17-21 actually read on Species C (Fig.6) and claims 22-26 actually read on species D (Fig.8). Therefore, claims 1-16 and 55-59 are being examined as being directed to Species A.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 5 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claims 5 and 6, "the requirements of the sensor" (all occurrences) is indefinite.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 2, 5, 6 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Imaizumi et al (U.S. Pat. 6,293,911).

Referring to Figure 1, Imaizumi et al. disclose a multimode light source (3A, col.6, lines 12-14), an endoscope (2A), a camera including a color image sensor (26), a low light image sensor (25), a beam splitter (22), one or more filters (29,23), one or more optical imaging components (18,19,21), an image processor/controller (5A) and a video monitor (6). As to claim 2, the camera is attached to the proximal end of the endoscope. As to claim 5, note transmittance characteristic of filter (12) in Figure 2. As to claim 6, note transmittance characteristics of filters (22) and (23) in Figures 3 and 4. As to claim 15, note transmittance characteristic of filter (12) in Figure 2 which blocks the detected fluorescence wavelength bands (shown in Figure 4).

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3, 5, 6, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Imaizumi et al. in view of Kazuhiro et al. (U.S. Pat. 6,280,378).

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Imaizumi et al. disclose the device as described above but fail to disclose the components of the camera being built into the insertion portion. Although it is notoriously well known in the endoscope art to dispose the camera in the distal end, Kazuhiro et al. is cited to show that placement of at least two CCDs and a beam splitter in the distal end has been contemplated. Placement of the camera in the distal end of the endoscope eliminates losses due to optical components that are necessary to transmit the image from the distal end to the proximal end. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the camera in the distal end of the Imaizumi endoscope. As to claims 5, 6 and 15, note discussion in the preceding numbered paragraph.

#### *Allowable Subject Matter*

8. Claims 4, 7-14 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claims 55-59 are allowed.

#### *Conclusion*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Note the following fluorescent imaging systems:

Sano et al. (U.S. Pat. 6,099,466)

Fulghum (U.S. Pat. 6,364,829)

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Suzuki (U.S. Pat. 4,768,513)

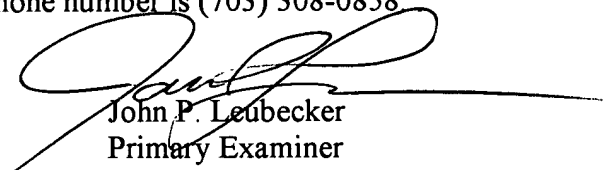
Kaneko et al. (U.S. Pat. 6,422,994)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P. Leubecker whose telephone number is (703) 308-0951.

The examiner can normally be reached on Monday through Friday, 6:00 AM to 2:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (703) 308-0994. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



John P. Leubecker  
Primary Examiner  
Art Unit 3739

jpl  
July 14, 2003